adverse inferences might well be drawn if he failed to go into the witness box; the strength of those inferences depending upon the nature of the evidence that had been adduced against him in the particular case. This in itself would be a strong inducement to an accused to give evidence, particularly if he were innocent. The only added inducement consequent on the removal of the option is the withdrawal of the hope that he can get away with a story the truth of which cannot be tested by cross-examination. The inferences that the court may draw from his failure to testify are not enlarged by the amendments to the Code; they are limited, as they have always been, to such inferences as appear to the decider of fact to be proper in the particular case having regard to all its circumstances."

From the passages (which we have set out) in the judgment delivered by Lord Diplock we are of the opinion that the interpretation of Section 188(1) of the Criminal Procedure Code was necessary for the decision of the case of *Haw Tua Tau* v. *Public Prosecutor*.

Question (b)

In the case of *Ong Kiang Kek* v. *Public Prosecutor* the question before the Court of Criminal Appeal involved the interpretation of section 177C of the Criminal Procedure Code which is materially similar to section 172(f), now re-numbered section 179(f). Section 177C was re-numbered section 179(f). Section 177C was re-numbered section 181 in the Criminal Procedure Code, Chapter 113 at Volume III of the 1970 Revised Edition of the Statutes of the Republic of Singapore which came into force on April 15, 1971. By Act 10 of 1976, it was again re-numbered as section 188(1) and it so appears in the present Reprint of the Criminal Procedure Code which was published on July 31, 1980.

We answered Question (b) in the negative because, in our opinion, the re-enactment of section 177C did not preclude the Judicial Committee of the Privy Council from giving an interpretation which is different from the interpretation given by the Court of Appeal in *Ong Kiang Kek's case* (see *Regina* v. *Bow Road Justices (Domestic Proceedings Court), Ex parte Abedigba*[4]).

Questions answered.

Solicitors: *M.N. Swami.*

ATTORNEY-GENERAL v. DERRICK CHONG SOON CHOY & 3 ORS.

QUEK LENG CHYE & 3 ORS. v. ATTORNEY-GENERAL

[C.A. (Kulasekaram, Sinnathuray, Rajah JJ.)
May 25, 1984]
[Singapore – Civil Appeal Nos. 58, 59, 60, 61, 65, 66, 67 & 69 of 1983]

Company law – Directors – Disqualification from directorship and managment of companies – Contravention of provisions of Companies Act (Cap. 185), ss. 39(4), 43 & 363(3).

Company law – Shares – Offer to sell shares – Non-compliance with requirements of Companies Act – Documents deemed to be prospectuses – Disqualification under s. 130 of Companies Act in public interest – Matters for consideration by court in s. 130 application – Discretion – Companies Act (Cap. 185), ss. 4 & 130.

The respondents Derrick Chong Soon Choy ("Chong"), Gan Khai Choon ("Gan"), Huang Sheng Chang ("Huang"), and Quek Leng Chye ("Quek") were convicted of an offence punishable under s. 39(4) read with s. 43 of the Companies Act (Cap. 185) in a District Court (see [1983] 2 M.L.J. xcvi).

The respondents (who were the applicants in the High Court) made separate applications to the High Court for orders pursuant to s. 130 of the Companies Act that notwithstanding the conviction of each of them in the District Court for an offence under s. 39(4) read with s. 43 of the Act, and, in the cases of Huang and Chong, of another offence under s. 363(3) of the Act, each of them be at liberty to be a director of and/or be concerned in or take part in the management of the companies named in their respective applications. The learned Chief Justice refused the applications for directorships, but he granted the applicants leave to be concerned in and take part in the management of the companies concerned, except two companies, C.C.C. (Holdings) Ltd. and City Country Club Pte Ltd. (see [1984] 1 M.L.J. 5), thereby giving rise to these two sets of appeals.

In the first set, the Attorney-General appealed against the decisions granting leave to participate in the management of the companies. In the second set, Quek, Gan, Huang, and Chong, by way of cross-appeal, sought to vary the orders of the learned Chief Justice to allow them to be directors and to participate in the management of the companies. Chong, however, did not proceed with his cross-appeal at the hearing, but sought leave to be employed as a club manager only.

Two grounds were raised by the Attorney-General in his appeals: (1) the learned Chief Justice had erred in law in granting the applicants leave to participate in the management of their respective companies and failed to appreciate that the applicants had not discharged the onus that was on each of them to show why they should

each be made an exception to the legislative policy; (2) having refused the applicants leave to be directors of companies, the learned Chief Justice had erred in law and in fact in failing to appreciate that by allowing the applicants to participate in the management of companies, he had allowed the applicants in effect to drive from the back seat.

The submissions for Huang, Quek and Gan were that they were commercial men and not legally trained. They had to rely on professional advice and did not possess the technical knowledge of the requirements of the Companies Act as to the circumstances in which a prospectus might or might not be needed.

Held, allowing the appeals of the Attorney-General and dismissing the cross-appeals: (1) in a section 130 application, the Court is not bound by what took place in the criminal proceedings. Neither the applicants nor the Attorney-General is confined to the circumstances of the offence or to the matters which were the substance of proceedings in the District Court;

(2) the correct approach to follow in s. 130 applications is as stated by Legoe J. in *Re Marsden.*[5] "The Court should consider the relevant facts disclosed by the conviction afresh and feel free to view it differently from the Court which dealt with the criminal charge";

(3) the Judge has discretion to grant or refuse leave in a s. 130 application. Having found the applicants had intentionally and unlawfully avoided the issue of a prospectus for the sale of the shares of the Company, the learned Chief Justice was therefore right in the exercise of his discretion to refuse the applicants leave to be directors of companies;

(4) more and more in the management of companies, employees in managerial positions are exercising as much power in the management of companies as are exercised by directors of companies. They, as with directors, are placed in a position where they are not without opportunity to manipulate the corporate structure to their own interest. It is essential, therefore, that managers of companies, like directors, are persons of integrity. In a rapidly changing economic, financial and social circumstances in Singapore, directors of companies as well as managers have a particular social responsibility to act with the utmost candour in the management of companies. In allowing the applicants leave to manage companies, the learned Chief Justice had not given due or sufficient regard to this aspect of the matter;

(5) the onus is on the applicants to show why notwithstanding their convictions they should be granted leave to participate in the management of companies. Far from discharging the onus that is upon them, the cumulative findings of the learned Chief Justice show that the applicants are not suitable persons to be involved in companies;

(6) leave to be directly or indirectly concerned or take part in the management of companies should therefore be refused. However, leave would be granted to Chong, not to participate in the management of a club, but under the control of the management committee of any club to be an employee therein.

Cases referred to:

(1) *Huang Sheng Chang & Ors.* v. *Attorney-General* [1984] 1 M.L.J. 5.
(2) *Re Magna Alloys & Research Pty. Ltd.* 1 A.C. L. R. 203.
(3) *Public Prosecutor* v. *Huang Sheng Chang & Ors.* [1983] 2 M.L.J. xcvi.
(4) *Re Macquarie Investment Pty. Ltd.* 1 A.C.L.R. 40.
(5) *Re Marsden* 5 A.C.L.R. 694.

COURT OF APPEAL.

Tan Boon Teik (Attorney-General), *Foong Kwok Jen* (Dy. Sr. State Counsel) with him, for appellant in C.A. Nos. 58, 59, 60 and 61 of 1983, and the respondent in C.A. Nos. 65, 66, 67 and 69 of 1983.

M. Karthigesu for respondent in C.A. No. 58 of 1983 and appellant in C.A. No. 69 of 1983.

S. Rajendran (Wong Boon Teck with him) for respondents in C.A. Nos. 59 and 61 of 1983 and appellants in C.A. Nos. 65 and 66 of 1983.

Tan Kok Quan for respondent in C.A. No. 60 of 1983 and appellant in C.A. No. 67 of 1983.

Cur. Adv. Vult.

Sinnathuray J. (delivering the Judgment of the Court): These appeals arise from applications made by way of originating summonses in the High Court by Huang Sheng Chang ("Huang"), Quek Leng Chye ("Quek"), Gan Khai Choon ("Gan"), and Derrick Chong Soon Choy ("Chong") for an order pursuant to section 130 of the Companies Act ("the Act") that notwithstanding the conviction of each of them on February 12, 1983 in the Subordinate Courts for an offence under section 39(4) read with section 43 of the Act and, as regards Huang and Chong of another offence under section 363(3) of the Act, each of them be at liberty to be a director of and/or be concerned in or take part in the managment of the companies named in their separate applications.

On October 20, 1983, the learned Chief Justice refused the applicants leave to be directors of companies but granted them leave to be concerned in and take part in the management of the companies named in their applications,

save for two companies, C.C.C. (Holdings) Ltd. and City Country Club Pte. Ltd.

There are two sets of appeals. The Attorney-General who was the respondent in the originating summonses appeals against the decisions given by the learned Chief Justice granting the applicants leave to participate in the management of the companies. By way of cross-appeal, the applicants seek to vary the order of the learned Chief Justice to allow them to be directors as well as to participate in the management of the companies.

The four applicants and one Ng Cheng Bok with whom we are not concerned pleaded guilty and were convicted in the District Court on a charge that they being directors of C.C.C. (Holdings) Ltd. in April and May 1982 "caused documents to be sent out offering for sale shares in C.C.C. (Holdings) Ltd. to the public and these documents are deemed to be prospectuses issued by the company by virtue of section 43 of the Companies Act, and the documents do not comply with the requirements of the Companies Act", an offence punishable under section 39(4) read with section 43 of the Act. Huang was fined $1,000 and Quek, Gan and Chong were each fined $500.

Additionally, Huang and Chong also pleaded guilty and were convicted on another charge that they in April and May 1982 in the furtherance of the common intention of them made offers to members of the public to purchase shares in C.C.C. (Holdings) Ltd. in contravention of section 36(3) of the Act and thereby have committed an offence punishable under section 363(5) of that Act read with section 34 of the Penal Code (Chapter 103). Huang was fined $1,000 and Chong was fined $500. It must be added that Quek and Gan consented to this charge being taken into consideration by the District Judge in determining the appropriate sentence for each of them in respect of the plea of guilty by them to the offence punishable under section 39(4) of the Act.

Also at the trial in the District Court, Winston Chen Chung Yung ("Winston Chen"), an advocate and solicitor, a partner of the firm of solicitors, Shook Lin & Bok, pleaded guilty and was convicted of having abetted the four applicants and Ng Cheng Bok in the commission of the offence punishable under section 39(4) of the Act. Shook Lin & Bok were the solicitors for C.C.C. (Holdings) Ltd. and Winston Chen was the partner who was in sole charge of the Company's matters.

The four applicants after their convictions resigned from all their directorships in companies incorporated in Singapore. They also ceased to be concerned and refrained from taking part in the management of the companies of which they had been directors. They were compelled to do so by the provisions of section 130 of the Act.

Huang was at the time of his conviction a prominent businessman. He was involved in a wide range of 17 companies, he was chairman of the board of directors of 16 of them, he was a director in the one other. Through one of the companies, he is engaged in the Singapore operation of the international credit card business of Diners Club. Four connected companies under the name of Diners operate as publishers, travel and tour agents, and, air cargo and forwarding agents. Through two other companies, Huang and his family own and manage the Orchard Hotel. The family also own several investment holding companies. Of the 17 companies, six are either wholly owned by him and his family or in respect of which they are the majority shareholders. In at least seven other companies, he and his family are substantial shareholders with sufficient shareholdings to exert considerable influence in the companies.

Quek, like Huang, is also a prominent businessman. He is a member of the Quek family which controls the Hong Leong Group of companies. Quek was director or managing director or governor of 41 companies in the Group. Of these 41 companies, four are public listed companies. There are three companies, Hong Leong Corporation Ltd, Hong Leong Holdings Ltd., and Hong Leong Investment Holdings Ltd., with a paid-up capital of $85 million, $51.175 million and $14 million respectively. These are holding companies of the Quek family. These three companies by their shareholdings and their subsidiaries' shareholdings control the four public listed companies, Hong Leong Finance Ltd., City Developments Ltd., Singapore Finance Ltd., and King's Hotel. There are 14 other companies with sufficient paid-up share capital to qualify for public listings. The financial empire controlled by the three Hong Leong holding companies is as vast as it is enormous.

Gan, though not as influential as Quek, nonetheless plays a very important role, in the Hong Leong Group. At the time of his conviction, he was director of 11 companies in the Group, four are public companies of which three are

listed in the Stock Exchange of Singapore. Gan was the Group General Manager of two of the public listed companies, Hong Leong Finance Ltd., and Singapore Finance Ltd. Hong Leong Finance Ltd., we are told, is a very large finance company with a paid-up share capital ranking among the biggest of financial institutions in Singapore, including banks.

Chong has been a club manager for over 20 years. For the last 16 years he was the general manager of the American Club. He and his family own a personal investment company, Nedaa Pte. Ltd. At the time of his conviction, he was also a director of C.C.C. (Holdings) Ltd., City Country Club Pte. Ltd. and one other company, SMT Pte. Ltd. It can be said straightaway that though references to Chong have to be made hereafter, no weighty consideration is required of us on the appeal and cross-appeal of Chong. This has come about because at the hearing of the appeal against Chong, the stand taken by Mr. Karthigesu for Chong was that Chong be permitted, not to take part in the management of companies, but to be employed as a club manager only. The cross-appeal of Chong was also not proceeded with.

The material facts relating to the charges and the convictions of the four applicants are fully set out in the judgment of the learned Chief Justice reported in *Huang Sheng Chang & Ors.* v. *Attorney-General*[1].

Briefly, when Chong was general manager of the American Club he came to know of a piece of land at Stevens Road next to its junction with Balmoral Park which he thought was suitable for development as a club. The land was owned by City Developments Ltd., in which Quek was a director. Chong who had the expertise of running a club but not the capital approached Huang who had the financial resources for the business venture. The two of them persuaded Quek that a company be formed to buy and develop the land and that they carry on the business of a proprietary club. Quek has said that the primary objective of the project was to make money from the sale of shares of the company that was going to own and manage the club. The agreement was formalised in a pre-incorporation agreement dated August 1, 1979. And, on August 11, 1979 a private company was incorporated under the name of City Country Club Pte. Ltd. It was later renamed as C.C.C. (Holdings) Ltd., which is hereinafter referred to as "the Company". Upon the incorporation of City Country Club Pte. Ltd., Huang became its chairman. Chong and Ng Cheng Bok, brought in by Huang, were appointed directors of the Company. Quek and Gan were appointed directors on September 6, 1979 on their nomination by Queens Pte. Ltd., a wholly owned subsidiary of Hong Leong Holdings Ltd. The decision to use Queens Pte. Ltd. as Hong Leong Holdings Ltd.'s vehicle in the joint venture was made by Quek.

Soon after the incorporation, one million shares fully paid for in cash were issued to the parties in the proportions provided for in the agreement. Huang, Ng Cheng Bok and Queens Pte. Ltd. were issued 30% each of the shares of the Company. The remaining 10% was given to Chong. The Company then bought the land from City Developments Ltd for $8.5 million and, at the same time the land was mortgaged to Hong Leong Finance for a term loan of $6 million for three years. This loan was the first of several loans taken by the Company from the same finance company to finance the construction of the club house on the land.

From the beginning what was foremost in the minds of the directors, the promoters of the club, was that the substantial profits they expected, mainly from the sale of the shares of the Company, should be given the lowest exposure to tax. Their solicitor, Winston Chen, having been instructed by Huang in this matter, obtained an opinion as to how to achieve this object from Mr. Steven Oliver Q.C., in England. He proposed a scheme whereby the promoters could realise their investments by the sale of shares of C.C.C. (Holdings) Ltd. to individuals and companies who want to be members of the club.

The proposed scheme however raised another issue. As it was anticipated that there would be around 2,000 members of the club, for the sale of shares to such a large number of persons, the Act required the promoters to issue a prospectus. Huang was aware of this. In September 1980 he consulted Mr. Westley of Wardley Ltd., a merchant bank. Mr. Westley, by a letter of October 7, 1980 to Huang, stated that in his opinion, should the scheme involve the sale of shares a prospectus would be required and suggested that the promoters of the club sell membership rights instead. Huang informed Winston Chen of Mr. Westley's views on November 4, 1980.

For many months, the applicants were vexed by the prospectus problem. Some six months

after Mr. Westley's advice, on May 20, 1981 Huang instructed Winston Chen that because of the prospectus problem equity participation was to be out. He wanted Winston Chen to think of some other scheme.

On September 18, 1981 the applicants had a meeting with two accountants and Winston Chen. Winston Chen explained the scheme of Mr. Oliver and the problems regarding prospectus. The meeting ended with him being instructed to "work out" the prospectus problem. The accountants were to examine the scheme.

Shortly thereafter Winston Chen sought an opinion from Mr. David Bennett Q.C., in Australia, as to whether members of a private club are a "section of the public" within the meaning of that expression in section 4(6) of the Act. In his written opinion dated October 19, 1981, Mr. Bennett had "little doubt that an offer to the members of a club having some thousands of members . . . would be an offer to a section of the public . . .". On October 31, 1981 Winston Chen sent Huang a copy of Mr Bennett's opinion. In his letter to Huang, Winston Chen advised him that "it would be preferable to have a prospectus issued unless exemption is obtained from the Registrar of Companies under section 39A of the Companies Act". He was wrong in this advice because section 39A does *not* empower the Registrar of Companies to exempt anyone from the obligation to issue a prospectus where a prospectus is required by the Act.

On November 17, 1981, there was a meeting between Huang, Quek, Chong and Winston Chen. The scheme and the need for a prospectus was again discussed. In the course of discussion, Winston Chen said that he was meeting the Assistant Registrar of Companies that afternoon to seek his views on the prospectus. All the others thought that it was an excellent idea.

In these appeals, we are not concerned with what took place between Winston Chen and the Assistant Registrar of Companies. It is sufficient to say that there were oral and written communications between them. The crucial letter of Winston Chen to the Assistant Registrar of Companies was vetted in draft by Huang and Chong. In early February 1982, Winston Chen told the applicants that the decision of the Registrar of Companies was that the scheme could proceed without the need to issue a prospectus but he advised that they should not advertise and should only invite their friends.

Soon after on February 22, 1982, at an Extraordinary General Meeting of C.C.C. (Holdings) Ltd., it was resolved to have a bonus issue and a rights issue. The 5,000,000 issued shares of $1 each of the Company were first consolidated into 1,000 shares of $5,000 each and the authorised capital was increased to $20 million by the creation of 3,000 additional shares of $5,000 each. Of the new shares, 1,000 were offered to the existing shareholders of the Company, namely the four applicants and Ng Cheng Bok, as a one for one rights issue at a premium of $25,000 each. The shares in the rights issue were uncalled. A sum of $10 million being part of the surplus created by a revaluation of the property at Stevens Road was capitalised and appropriated to pay for the other 2,000 new shares of $5,000 each which shares were then distributed as a two for one bonus issue to the existing shareholders, all of whom accepted the shares in the rights issue.

In March 1982 the City Country Club Pte. Ltd. changed its name to C.C.C. (Holdings) Ltd., and was converted into a public company. This was done because as a private company it was limited to no more than 50 shareholders and was prohibited from making any invitations to the public to subscribe for any shares of the Company. A wholly owned subsidiary of C.C.C. (Holdings) Ltd. was then incorporated which took the original name of City Country Club Pte. Ltd.

By end of March 1982, the applicants had prepared a list of individuals and companies whom they wish to invite to be members of the Club. They had also finalised the letter of invitation to the proposed invitees. On March 31, a firm of brokers was appointed to sell the 2,000 bonus shares that had been allotted to the existing shareholders.

From April 2, 1982, the letters of invitation signed by Huang were despatched to hundreds of individuals and companies. The letter reads as follows:

"As you are known to our directors to be of high repute, we are pleased to invite you to join the exclusive City Country Club. Enclosed herewith you will find a brochure and a copy of the Rules of the Club together with an application form.

If you accept our invitation please complete the appli-

cation form and return the same to us together with your payment for the entrance fee as soon as possible.

The entrance fee for an individual is $2,000/- and for a corporation or firm is $3,000/- (2 nominees) and your attention is drawn to Rule 12 of the Rules of the Club.

Upon acceptance of this invitation you shall be a qualified person under Rule 9 of the Rules of the Club and shall be entitled to the rights under Rule 10 of the Rules of the Club.

To become a member of the Club you must within a period of one month of your becoming a qualified person become the registered holder in CCC (Holdings) Limited of:

(a) in the case of an individual, one (1) ordinary share
(b) in the case of a firm or corporation two (2) ordinary shares.

You may contact the broking firm named below with a letter of confirmation from the Board confirming that you are a qualified person of the Club to make your offer share/s.

Yours truly

Sgd. S. C. Huang
Chairman

DC: sc

Broking firm: Lim & Tan (Pte)
Tel: 2244988
(Mrs. Esther Seet)
30 Stevens Road,
Singapore 1025
Tel: 7338822

The learned Chief Justice has observed that the letter of invitation and its enclosures disclosed no information whatsoever of C.C.C. (Holdings) Ltd. except that the land occupied by the City Country Club Pte. Ltd. "occupies some 4 acres in the extent and is leased (for 10 years from 1982) from C.C.C. (Holdings) Ltd". The letter of invitation did not disclose that one ordinary share of C.C.C. (Holdings) Ltd. with a par value of $5,000 had to be purchased at $30,000 i.e. at a premium of $25,000. In addition, an individual was required to pay $2,000 (in the case of a compay $3,000) described in the letter as "the entrance fee". At that time, when the shares were offered, the net tangible asset backing for each ordinary share of $5,000 each was $7,374.

The letter of invitation was without doubt an offer to the public to purchase shares in the Company. The entrance fee was an option to purchase the shares. In May 1983 the police commenced investigations.

The learned Chief Justice's finding on the scheme which ran foul of the prospectus requirements of the Act is that the applicants knew that if the 2,000 invitees were persuaded to apply for membership and take a share each in the Company, they would reap enormous profits (some tens of millions) from these invitees. He said that it was "highly unlikely, to put it at its lowest, that all or a significant proportion of the 2,000 shares which were available to invitees under the scheme would be taken up if a prospectus in compliance with the Act were issued to each invitee, thus resulting in a situation, possibly a financial disaster to the original shareholders, which they must have wanted to avoid at any cost".

The learned Chief Justice also carefully considered section 130 of the Act. He has drawn on the decisions of Australian Courts based on a section of their Companies Act identical to our section 130. The prohibition in the section is not punitive, it is wholly protective. The clear expression of the legislative policy in section 130 is that a person convicted of an offence falling within the section is not be permitted to be a director nor is he to be permitted to take part in the management of a company. The simple reason is, because of the conviction, he is not a suitable person to be involved in company affairs. As the learned Attorney-General put it such a person is deemed for a period of five years not to have the appropriate standard of commercial morality to be trusted in the management of corporate affairs. As was said by Bowen C.J. in *Re Magna Alloys & Research Pty Ltd.*,[2] the section "is designed to protect the public and to prevent the corporate structure from being used to the financial detriment of investors, shareholders, creditors and persons dealing with the company. In its operation it is calculated to act as a safeguard against the corporate structure being used by individuals in a manner which is contrary to proper commercial standards".

However, the Legislature has given the High Court jurisdiction to grant leave to the person caught within the provision of section 130, to relieve him from the consequences which the Legislature has, in the general public interest, seen fit to impose on every person immediately upon his conviction, and to allow him to be a director or to take part in the management of a company. The onus is on the person who seeks

the leave of the Court to make a sufficient case for the Court to depart from the clear legislative policy.

The learned Chief Justice has itemised five matters which we agree a Court, in exercising its discretion whether to grant leave or not, ought to consider. He then dealt with the case of each of the applicants separately and came to the decisions now under appeal.

The two grounds of appeal raised by the learned Attorney-General are these.

The first ground is that the learned Chief Justice had erred in law in granting the applicants leave to participate in the management of their respective companies, and failed to appreciate that the applicants had not discharged the onus that was on each of them to show why they should each be made an exception to the legislative policy. The point is made that leave should only be granted when an applicant had shown that notwithstanding his conviction, his suitability to be involved in companies has not been impugned.

The other ground is, having refused the applicants leave to be directors of companies, the learned Chief Justice had erred in law and in fact in failing to appreciate that by allowing the applicants to participate in the management of companies, he had allowed the applicants in effect to drive from the back seat. On Huang, the submission is that because he and his family, by their shareholdings, have controlling interests in the companies, there is every danger that in permitting him to participate in the management of these companies, he will manipulate them behind the corporate veil to his own advantage as he has done in C.C.C. (Holdings) Ltd. As regards Quek, the submission is, giving him leave to be involved in the management of 39 companies of the 41 in the Hong Leong Group would endanger the interest of those who have invested or may invest or otherwise have dealings with those companies. Because the Hong Leong corporate group is immense and inter-locking, the corporate veil in that financial empire gives ample room for anyone without an impeccable character or integrity, untold opportunities to manipulate things to his own advantage. As for Gan, by allowing him to take part in the management, Gan can now resume his position as Group General Manager of the Hong Leong Finance Ltd. and resume control of the management of this financial institution. He is put to the same position as he was before his conviction.

One matter which we resolved early at the hearing of the appeals can be disposed of shortly. Mr. Rajendran for Quek and Gan, as did Mr Tan Kok Quan for Huang, sought to make a submission founded on the observations of the learned District Judge when he pronounced sentences on the applicants. What had happened in the District Court was that Mr. George Carman Q.C., leading counsel for Huang, had invited the learned District Judge, if he was so minded, to indicate his views on the part played by Huang having regard to the fact that Huang would suffer the disabilities under section 130 of the Act.

We have read the Grounds of Decision of the learned District Judge: see *Public Prosecutor* v. *Huang Sheng Chang & 5 Ors.*[3] He was favourably disposed to the eloquent mitigation pleas. However, as we told counsel before us, in a section 130 application, the Court is not bound by what took place in the criminal proceedings. For one thing, the onus on an applicant in these proceedings is *reversed* as compared to the onus placed on him in the criminal proceedings where the burden of proof is on the prosecution. For another the issues here are much wider than the issues in a criminal charge. Also, except in rare cases, it is not the practice in our criminal Courts to allow the prosecution to answer or rebut the facts in a plea of mitigation. For these reasons, neither the applicants nor the Attorney-General is confined to the circumstances of the offence or to the matters which were the substance of proceedings in the District Court: see *Re Macquarie Investments Pty Ltd*[4] . In this case, Wooten J. in the Supreme Court of New South Wales said that an applicant "is entitled to raise any matter which goes to show that notwithstanding his conviction he is a person who ought to be permitted to take part in the managment of companies," and the Attorney-General "is entitled to raise any matter, whether concerned with the offence, subject matter of the conviction or not, which supports the view that it would be contrary to the public interest protected by the Companies Act to permit" the applicant so to act. Six years later, in *Re Marsden*[5] , Legoe J. in the Supreme Court of South Australia, having reviewed the earlier authorities, put the matter more succinctly: "The Court should consider the relevant facts disclosed by the conviction afresh and to feel free to view it differently from the

Court which dealt with the criminal charge". In our opinion, this is the correct approach to follow in section 130 applications.

The decision to grant or refuse leave in an application under section 130 of the Act is a discretionary one. The principles governing an appeal against the exercise of a discretion are well settled: See *White Book* 1982 Vol 1 para 59/1/14. An appeal will not be entertained from and order which it was within the discretion of the Judge to make, unless it is shown that he exercised his discretion under a mistake of law, or in disregard of principle, or under a misapprehension as to the facts, or that he took into account irrelevant matters, or failed to exercise his discretion or that his order would result in injustice: and the Court will assume that the Judge properly exercised his discretion unless the contrary is shown.

The submissions for Huang, Quek and Gan are much the same as were made before the learned Chief Justice. It is said that the applicants were commercial men that they were not legally trained, and therefore, they had to rely on professional advice. In particular, it is said that they did not have the technical knowledge of the requirements of the Companies Act as to the circumstances in which a prospectus may or may not be needed. To put it bluntly, the short point that is made is that the principal villain in the whole affair was Winston Chen and, in a lesser role, was the Assistant Registrar of Companies. If not for them, the applicants would not have committed the offences to which they had pleaded guilty in the District Court. In the circumstances, the applicants were only technically guilty of the offences which, in any event, were strict liability offences. That as there was no dishonesty on the part of any of them, the learned Chief Justice had wrongly exercised his discretion in refusing the applicants leave to be directors of the companies referred to in their applications.

The facts disclosed by the convictions are that as early as September 1980 Huang knew that the proposed scheme required the issue of a prospectus. Troubled about it, Huang obtained a written opinion from Mr. Westley in October 1980. Huang informed Winston Chen of Mr. Westley's views in November 1980. Because it is not in the summary of facts before the learned District Judge, it does not mean that the other applicants did not know at that time that the proposed scheme required a prospectus. Quek and Gan have said in their affidavits that they left most of the matters relating to the affairs of the Company to Huang and Chong and that there were meetings held when they were not present. But they have not said that they did not know that a prospectus was required to sell the shares of the Company. Be that as it may, by September 1981 however, Quek and Gan knew that to carry out the proposed scheme, a prospectus had to be issued. Then in November 1981 the issue of 2,000 shares to prospective members of the club had been finalised. We are of the view that by now the applicants, as directors of the Company, must have had in the forefront of their minds that a prospectus had to be issued. We are further of the view that it is not an excuse for the applicants to say that they left the question of the issue of prospectus to their solicitors.

The position of the applicants, however, is far more grave. The fact of the matter is by November 1981, they had been advised by several accountants, two Queen's Counsel and even Winston Chen, after Mr. Bennett's opinion, that a prospectus was needed. It is not a case where the applicants as directors wanted to issue a prospectus and their professional advisers had advised against it. It is the applicants who were adamant not to issue a prospectus. In fact, it was they who instructed Winston Chen to find a way out. What he did, of course, is another matter.

So, it being our view that it is the duty of directors to issue a prospectus and, on the facts we have reviewed, the only proper finding is, as the learned Chief Justice found, the applicants had intentionally and unlawfully avoided the issue of a prospectus. He rightly rejected the submission that the offences to which the applicants had pleaded guilty were technical in nature and of the character of strict liability offences. We agree with him that the submission altogether disregards the defences provided in the Act that were available to the applicants had they wanted to claim trial to the charges. The applicants were represented by counsel, and as the learned Chief Justice has observed the only inference that can be drawn from their plea of guilty is that they could not "plausibly put forward before the trial court a defence based on (a), (b) or (c) of section 39(5)" of the Act. The applicants having pleaded guilty to the charges, we are not disposed to analyse any of the defences in the Act in the abstract.

To sell the shares of the Company, the Act requires the applicants to issue a prospectus. They have to make a full and true disclosure of the Company's financial and other affairs. Amongst other matters, the prospectus would disclose the value of the shares offered and the net tangible asset backing for each share. It would contain an audited account of the Company showing its assets and liabilities. It would show how the assets were valued. It would show to whom the proceeds of the sale would go to. It would disclose the share capital of the Company and the number of shares which were issued and whether they were fully-paid, only partially paid or nil paid. It would require disclosure on the manner in which the Company proposed to finance the total cost of the development of the club, estimated in February 1982 to be about $26 million, the extent of its loans from Hong Leong Finance which was then already $11 million and how the Company proposed to repay the loans and interest.

Why did the applicants not want to issue a prospectus? It is because they did not want to disclose to the buyers that the shares were being sold at an exorbitant price. They did not want to disclose that as vendors they will realise $30 million as profit from the sale of 2,000 shares and continue to hold 50% of the equity of the Company. The applicants feared that this disclosure would render their shares unmarketable leading to a financial disaster to them. We accordingly reject the contention, as did the learned Chief Justice, that the applicants had acted honestly. We accept that in failing to act honestly, they might not have acted dishonestly within the strict definition of the criminal law. But the lack of honesty displayed by the applicants as directors of a public company in selling the shares to the public shows that their commercial integrity is suspect. The letter of invitation reflects the wilful failure on the part of the applicants to disclose matters which the law required them to publish. When they were prosecuted they pleaded guilty to the charges. They accepted without any qualification whatsoever the summary of facts read out in the District Court. In mitigation of the offences, they put forward the excuse that they had acted honestly and ran foul of the law only because they were wrongly advised. The learned Chief Justice rejected these assertions. As we have shown, they are untenable in law and not quite the truth. In our view, the learned Chief Justice rightly exercised his discretion to refuse the applicants leave to be directors of companies.

We uphold the grounds of appeal of the learned Attorney-General. More and more in the management of companies, employees in managerial positions are exercising as much power in the management of companies as are exercised by directors of companies. They, as with directors, are placed in a position where they are not without opportunity to manipulate the corporate structure to their own interest. It is essential, therefore, that managers of companies, like directors, are persons of integrity. In a rapidly changing economic, financial and social circumstances in Singapore, directors of companies as well as managers have a particular social responsibility to act with the utmost candour in the management of companies. We are of the view that when the learned Chief Justice allowed the applicants leave to manage companies, he had not given due or sufficient regard to this aspect of the matter.

The onus is on the applicants to show why notwithstanding their convictions they should be granted leave to participate in the management of companies. In our view, far from discharging the onus that is upon them, the cumulative findings of the learned Chief Justice show that the applicants are not suitable persons to be involved in companies. We are of the view that the applicants are not the sort of persons who can be trusted to manage companies candidly and honestly. The learned Chief Justice refused the applicants leave to be directors of companies. We now refuse the four applicants leave to be directly or indirectly concerned to take part in the management of the companies referred to in their applications. We however allow Chong, not to participate in the management of a club, but under the control of the management committee of any club to be an employee therein.

We allow the appeals of the Attorney-General with costs. The cross-appeals of the four applicants are dismissed with costs.

Appeals allowed;
Cross-appeals dismissed.

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